

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

STARBUCKS

Respondent

Case Nos.: I-02-72148

I-02-72291

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 - 2-1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 72148) served on May 21, 2002, the Government charged Respondent Starbucks with a violation of 21 DCMR 700.3 for failing to properly containerize solid waste.¹ The Notice of Infraction alleged that Respondent violated 21 DCMR 700.3 on May 20, 2002 at 239 Pennsylvania Avenue, SE, and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required 20 days after service (15 days plus 5 additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on July 2, 2002, this administrative court issued

¹ 21 DCMR 700.3 provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

an order finding Respondent in default and subject to a statutory penalty of \$1,000, in addition to the \$1,000 fine, and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(A).

The Government served a second Notice of Infraction (No. 72291) on July 10, 2002, and Respondent failed to answer that Notice within 20 days of service. Accordingly, on September 12, 2002, a final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and subject to a statutory penalty of \$2,000, in addition to the \$1,000 fine, pursuant to D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(B). The Final Notice of Default also set October 16, 2002, as the date for an *ex parte* proof hearing and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, or statutory penalties. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

At the October 16th hearing, Lenard Harrison, the Government inspector who issued the Notices of Infraction (the “Inspector”), appeared and testified on behalf of the Government. Appearing on behalf of the Respondent were Charles Hackley, Respondent's store manager, and Feliche Torre, Respondent's District Manager. Respondent entered an answer of Admit with Explanation at the hearing and requested a reduction of the applicable fine and penalty. Based upon the testimony at the hearing, my evaluation of credibility, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

The subject property is a Starbuck's retail location. On May 20, 2002, the Inspector observed numerous uncontainerized translucent plastic trash bags containing food and non-food waste. The trash bags were piled on and around two or more dumpsters adjacent to the store in an area controlled and used by Respondent for waste storage. The Inspector took photographs of the area on the day of the inspection showing the conditions upon which the charged violation is based. Petitioner's Exhibits ("PX") 100, 101, and 102. Respondent's representatives testified that since the date of the charged infraction, Starbuck's has taken action to ensure that all of its trash at the subject store is properly containerized. The store manager also acknowledged Respondent's accountability for the unlawful conduct that was charged.

The Inspector testified that he served the Respondent at its record business address in Seattle as reported on its master business license application maintained in the files of the Department of Consumer and Regulatory Affairs. The Government served the first and second Notices of Infraction upon Respondent by first class mail at its last known address, and the Government presented evidence that those Notices were not returned by the United States Postal Service. Respondent did not dispute the adequacy of service.

Starbucks explained that it failed to respond to the first and second Notices of Infraction (issued by the Department of Health's Rodent Control Bureau) because of the coincidence of it having also received a nearly-contemporaneous written warning from the Department of Health's Food Protection Division ("FPD") for the same uncontainerized trash conditions at issue in this case.² Respondent's store manager stated that he mistakenly believed no response to a Notice of

² Unlike the Notices of Infraction, the FPD citation carried no monetary penalty.

Infraction was required because Starbuck's had already corrected the conditions at issue to the satisfaction of the Food Protection Division, and because the assigned food inspector had told him that no further response was required. The Government did not dispute Respondent's version of the facts regarding the failure to answer and I credit Respondent's witnesses' testimony on that issue.

III. Conclusions of Law

By its plea of admit with explanation, Respondent violated 21 DCMR 700.3 on May 20, 2002. A fine of \$1,000 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(a)(1) and 3216.1(b). Respondent has promptly corrected the violation and accepted responsibility for its actions in mitigation of the unlawful conduct. I will therefore impose a fine of \$675.

As for the statutory penalty, the Civil Infractions Act requires a respondent to demonstrate "good cause" for failing to answer a Notice of Infraction within the time allowed by the statute. D.C. Official Code §§ 2-1802.02(f) and 2-1802.05. If a respondent cannot make such a showing, the statute requires that a penalty equal to the amount of the authorized fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a respondent fails to answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). By its explanation, Respondent has established good cause for failure to answer the first and second Notices of Infraction. I therefore shall not impose the statutory penalty.

IV. Order

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **SIX HUNDRED SEVENTY-FIVE DOLLARS (\$675)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 10/23/02

Paul Klein
Chief Administrative Law Judge